The opinion in support of the decision being entered today was ***not*** written for publication and is ***not*** binding precedent of the Board.

Paper No. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

_____

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

_____

Ex parte RONALD E. SNYDER,
ROBERT C. JENNESS, JR.
and
GEORGE W. BAKER, JR.

_____

Appeal No. 1997-0347
Application 08/193,654

_____

HEARD: February 24, 2000

_____

Before WINTERS, JOHN D. SMITH, and OWENS, ***Administrative Patent Judges***.

JOHN D. SMITH, ***Administrative Patent Judge***.

DECISION ON APPEAL

This is an appeal pursuant to 35 U.S.C. § 134 from the final rejection of claims 14 and 16 through 22. Claims 1 through 13 stand allowed.

Claim 14 is representative and is reproduced below:

14. A labeling machine for dispensing labels from a continuous web of material pulled along a feed path and applying the labels to a plurality of articles, comprising:

a supply means for providing a supply of the continuous web of material having the labels affixed thereto;

a dispensing means for removing a label from the continuous web of material for application to the article;

a first driving means positioned along said feed path downstream of said supply means for imparting a first pulling force on the continuous web of material, said first driving means including a metering means for metering the continuous web of material from said supply means; and

a second driving means positioned along said feed path downstream of said first driving means for imparting a second pulling force on the continuous web of material for pulling the continuous web of material from said supply means and for maintaining tension in the continuous web of material immediately downstream of said first driving means at a substantially constant predetermined level, said second driving means including a level [sic, lever] arm positioned in abutment with the continuous web of material and pivotable between first and second position [sic, positions], and a biasing means operatively connected to said lever arm for biasing said lever arm toward said second position to create said second

pulling force, wherein a total pulling force is required to pull the continuous web of material through the labeling machine at a predetermined web speed, said second pulling force being at least 20% of said total pulling force.

The references of record relied upon by the examiner are:

Harvey	4,239,569	Dec. 16, 1980
Asghar et al. (Asghar)	4,735,664	Apr. 5, 1988
Weiselfish et al. (Weiselfish)	5,230,765	July 27, 1993

Appealed claims 14, 16, 17, 19, 21, and 22 stand rejected under 35 U.S.C. § 103 over Harvey in view of Asghar. Claims 18 and 20 stand similarly rejected under the same section of the statute over Harvey and Asghar, further in view of Weiselfish.

We cannot sustain the stated rejections.

The subject matter on appeal relates to a labeling machine for dispensing labels from a continuous web of material which includes a first driving device for imparting a first pulling force on the continuous web of material and a second driving device, positioned downstream of the first driving device, for imparting a second pulling force on the

continuous web of material. Appellants' second driving device specifically includes a lever arm biased into abutment with the web so that the second pulling force is at least 20% of a total pulling force required to pull the web through the machine. See the "wherein" clause in appealed claim 14. By using a lever arm with a pulling force of at least 20% of the total pulling force, appellants' claimed invention permits higher web speeds to be obtained with existing upstream driving and metering devices (***i.e.***, the first driving device) by alleviating the load on the first driving

device thereby permitting the first driving device to be operated at a greater speed.

Harvey, the examiner's "primary reference," discloses a labeling machine for dispensing labels from a continuous web of material which includes (as shown in Figure 8) a first driving device, ***i.e.***, a powered metering roll 73, which feeds the web through the machine. See Harvey at column 9, lines 37 through 39. Harvey also discloses a pow-

ered rewind reel 155 positioned downstream of metering roll 73, and a dancer roll 153 which includes a spring-biased lever arm.

Based on a careful review of the appellants' briefs and the answer, the specific issues generated by the examiner's obviousness rejections of the appealed claims dispositive of the present appeal are whether or not 1) Harvey's dancer roll 153 and associated unnumbered elements depicting a spring-biased lever arm as shown in Harvey's Figure 8 embodiment, function to impart a second pulling force on Harvey's continuous web, and, if so, 2) whether or not it would have been obvious to a person of ordinary skill in this art "during the course of routine experimentation" (answer, page 5) to vary the pulling force of dancer roll 153 to provide at least 20% of the total pulling force on the web.

Appellants contend in their brief at page 5 that Harvey's dancer roll 153 operates in the same manner as Harvey's
upstream dancer roll 112 based on the disclosures in Harvey at column 8, line 60, through column 9, line 20, which indicate

that Harvey's dancer roll 112 maintains a substantially constant drag on the label supply wheel 110 by means of brake 165. Thus, appellants conclude that Harvey teaches that the movement of dancer roll 153 in Harvey serves only ***to regulate and maintain constant tension*** on the web being metered, while Harvey provides no disclosure or suggestion that dancer roll 153 is capable of providing a ***pulling force*** on the web, much less a pulling force of 20% of the total driving force necessary to pull the web through the machine as required by the "wherein" clause of appealed claim 14.

Based on a comparison of the somewhat similar geometric relationships shown by appellants' Figure 3 power dancer 108 and Harvey's Figure 8 spring-biased lever arm dancer roll 153 arrangement, the examiner's finding that Harvey's dancer roll 153 inherently provides some pulling force on the continuous web appears reasonable. However, since neither Harvey nor the examiner's "secondary reference" to Asghar, expressly teaches or

suggests that a pulling force is a function of such a dancer roll arrangement, there is no logical basis for the examiner to argue that "a person having ordinary skill in the art would have been
motivated to vary the ***pulling force*** through routine experimenta- tion to see if performance could be improved further" [emphasis added]. See the Answer at page 5. Moreover, even assuming for purposes of argument that based on Asghar's teaching that second driving means 44R cooperates with Asghar's first driving means 42R for rapid web take up (see Asghar at column 5, lines 62-64), a person of ordinary skill in the art would have been motivated and led to optimize Harvey's spring-biased lever arm dancer roll 153, it is not apparent to us how such optimization and modifi- cation would lead to a dancer roll assembly necessarily providing a second pulling force of at least 20% of the total pulling force on the web.

In short, we agree with appellants that the combined teachings of Harvey and Asghar do not provide a suggestion to a person of ordinary skill in the art to modify the dancer

assembly of Harvey in a manner that would arrive at appellants' invention as defined in independent claim 14. Accordingly, we cannot sustain the stated rejection of the appealed claims based on Harvey and Asghar. Moreover, since the Weiselfish reference is not relied on in a manner which remedies the basic deficiencies in the Harvey/Asghar combination, we do not sustain the examiner's stated rejection of appealed claims 18 and 20.

The decision of the examiner is reversed.

REVERSED

SHERMAN D. WINTERS Administrative Patent Judge	)	
JOHN D. SMITH Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES

TERRY J. OWENS)
Administrative Patent Judge)

JDS:psb

Charles M. Leedom, Jr.
Nixon Peabody LLP
8180 Greensboro Drive
Suite 800
McLean, VA 22102